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Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATRE AT JABALPUR M.P.

Criminal Appeal No. 295 /2000

APPELLANT:- (In Jail)

Munna alias Mehtar Satnami aged about 40 years, son of Bodhi, Ram Satnami, occupation cultivator, resident of village Chakraway, PS Nandghat, Distt. Durg M.P.

Versus.

RESPONDENT:-

The State of M.P.
P.S.Nandghat Distt. Durg MP.

APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE.

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DIVISION BENCH: HON. SHRI VIJAY KUMAR SHRIVASTAVA &
HON. SHRI DHIRENDRA MISHRA,J J

Criminal Appeal No. 295 of 2000

Appellant **Munna @ Mehtar Satnami**

Vs

Respondent **State of M.P.**

Smt. Meena Shastri, learned counsel for the appellant.

Shri Akhil Mishra, learned P.L. for the State.

ORAL JUDGMENT
(15/06/2006)

Per Dhirendra Mishra, J

By this appeal under Section 374(2) of the Code of Criminal Procedure the accused/appellant has questioned the legality and correctness of the judgment of conviction and order of sentence dated 30.11.99 passed by Additional Sessions Judge, Bemetara, Distt. Durg in S.T.No.237/98 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for the commission of offence under Sections 302 of the Indian Penal Code sentenced him to undergo imprisonment for life and to pay a fine of Rs. 500/-, in default of payment of fine to further undergo RI for two months for committing the murder of one Radheshyam @ Raghu.

2. Case of the prosecution in brief is that appellant Munna @ Mehtar Satnami himself lodged the report in police outpost Maaro, police station Naandghat on 03.06.98 at about 19.15 hrs. informing that he has committed the murder of Raghu as he was eve-teasing with his sister Mani Bai at about 6.00 p.m. by assaulting two-three axe blows on his

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head
hand. On the basis of this information, crime was registered under Section 302 of the IPC. The police proceeded to the scene of occurrence for investigation. Merg intimation of Ex.P-5 was recorded on the basis of information given by P.W.-2 Gau Das. Inquest over the body of the deceased was performed on 04.06.98 vide Ex.P-7 in the presence of the witnesses. Body of deceased Radheshyam was sent for autopsy to Primary Health Centre, Nawagarh where Dr. S.K.Sharma (P.W.-11) conducted the post mortem over the body of the deceased and submitted his report of Ex.P-12.The broken bangles and one bangle of Mani Bai was seized from near her house where the incident occurred vide Ex.P-1. Bicycle of the deceased was seized from the place of incident vide Ex.P-8. Clothing of the appellant worn by him during the time of incident was seized vide Ex.P-9. Blood stained axe lying near the dead body of the deceased was seized from the appellant vide Ex. P-10. Clothing of deceased Radheshyam was seized vide Ex.P-11. Plain soil, blood stained soil, blood stained HMT watch and broken bangles were taken into possession from the place of incident vide Ex.P-13. The weapon of offence-axe along with the wooden part was sent for examination to the doctor for his opinion and the doctor opined vide Ex.P-20 that the injuries present over the body of deceased Radheshyam could be caused by the axe. Wearing apparels of the appellant were sent for doctor's opinion who submitted his report and advised that the seized article be sent to the Forensic Science Laboratory for analysis vide Ex.P-21. The seized articles were sent to FSL vide Ex.P-17 and the report of the FSL is Ex.P-25. The articles were further sent to Serologist and Chemical Examiner for ascertaining the origin of the blood group and the report of the Serologist is Ex.P-26. After completing the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Bemetara, Distt. Durg who in turn committed the case to the Sessions Judge, Durg from where the learned Additional Sessions Judge received the case of

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transfer for trial. Learned Additional Sessions Judge framed the charge under Section 302 of the IPC against the appellant who abjured the guilt.

3. The prosecution in order to establish the charge against the accused/appellant examined as many as seventeen witnesses. Thereafter statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which the appellant denied the circumstances appearing against him in the prosecution case and submitted that he did not lodge any report in the police station and the signatures were obtained in a blank proforma. He pleaded innocence and false implication. However learned trial Court held the appellant guilty and convicted and sentenced him as mentioned above.

4. Homicidal death of deceased Radheshyam is not in dispute. Even otherwise from the post mortem report and the statement of Dr.S.K. Sharma (P.W.-11) who has found number of injuries described below and has opined that the cause of death is injury over the skull region and the same is homicidal in nature, homicidal death of deceased Radheshyam is established. Injuries noticed on post mortem :

i) Incised wound in the size of 3" x 1"x 2" deep dry clotted blood present. Internal ear also involved wound communicating with cranial cavity vertical in direction across the left ear.

ii) Incised wound in the size of 2 ½ " x ½ " bone deep dry clotted blood present Antero posterior direction left parietal region

iii) Incised wound oblique right parital region in the size of 5"x 1" bone deep.

iv) Incised wound across the middle of the left collor bone in

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the size of 2"x 1"skin and bone deep. Collor bone involved partially.

5. The only question to be decided in this appeal is whether the prosecution has been able to establish the involvement of the appellant in the commission of the offence by admissible and cogent evidence. The case of the prosecution is based on the statement of eye witnesses P.W.-1 and P.W.-8 namely Mani Bai and Basan Bai. However both the witnesses have turned hostile and they have not supported the case of the prosecution.

6. Learned trial Court has held the appellant guilty on the basis of circumstantial evidence. The circumstances relied upon by the trial Court may be summarized as under :

i) The accused/appellant himself lodged the report of the incident. P.W.-1Mani Bai has stated on oath that deceased Raghu caught hold of her hand whereupon she shouted for help and at the same time her brother Munna came there.

ii) In her statement before the Judicial Magistrate First Class, Bemetara under Section 164 of the Cr.P.C witness Mani Bai had stated that her brother Munna assaulted the deceased with axe and there is no allegation that the above statement was .recorded forcibly by the police.

Iii) P.W.-4 Anjor Das has also stated that when he was returning home in the evening Ram Krishna & Ghanshyam informed that Munna has killed his

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brother Raghu and his dead body is lying in front of the house of Mani Bai.

iv) P.W.-17 Ram Lochan who is the real brother of accused/appellant has also stated that his parents informed that Munna has killed Raghu.

v) P.W.-2 Gau Das has signed the First Information Report of Ex.P-3 as a witness, has stated that when he was passing from near the police outpost Maaro he was called by the Constable where he was told that Munna has lodged the report stating that he has murdered Raghu with axe and thus the admission content in the First Information Report is admissible as per Section 21 of the Evidence Act. Though the inculpatory part of the First Information Report is not admissible however, the fact mentioned in the FIR that the deceased was sitting near his sister Mani Baiand had caught hold of her hand, is admissible. This information is duly corroborated by the statement of P.W.-1 Mani Bai.

vi) The axe and the vest seized from the appellant as per Ex.P-9 contain human blood as per report of Ex.P-26 and injuries present over the person of the deceased could be caused by the above axe.

7. Learned counsel for the appellant submits that inculpatory part of the FIR was inadmissible and the Court below was not justified in relying on that part of the FIR and in arriving to the conclusion of guilt of the appellant. She further submits that the finding of the trial Court is based on the statement of the hostile witness P.W.-1 Mani Bai. It is further submitted

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that even the seizure effected by the appellant has not been proved as both the witnesses P.W.-6 Bhagwani and P.W.-9 Suresh have turned hostile and they have not supported the case of prosecution and therefore no alleged seizure of blood stained clothing of the appellant could be taken into consideration for holding the appellant guilty. The chain of circumstance relied upon by the prosecution has not been proved and the same is not complete and in the aforesaid circumstances the Court below ought to have extended the benefit of doubt to the appellant. Relying upon the judgment of ***AIR 1997 SC 496*** reported in the matter of ***B.A.Ramaiah Vs. State of A.P.*** it is submitted that ***"where the FIR is lodged by the accused himself the inculpatory statement of the accused cannot be used even against the maker unless its maker offers himself as a witness in trial it's limited use is as an admission against its maker alone unless the same does not amount to confession."***

8. In the alternative it is argued that from the case of prosecution itself it can be evident that the incident occurred in a spur of moment in sudden provocation without any premeditation as the deceased was eve teasing with the sister of the appellant in his presence and therefore the offence does not travel beyond Section 304-II of the IPC.

9. On the other hand learned counsel for the State supports the judgment of the trial Court.

10. We have heard learned counsel for the parties. We have perused the record, gone through the evidence and the impugned judgment. It is true that the inculpatory part of the FIR lodged by the appellant could not be used against the appellant for the purposes of his conviction, nevertheless the conduct of the appellant in lodging the FIR is very much

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admissible as per Section 8 of the Evidence Act and in the instant case the report has been lodged by the appellant just 45 minutes after the incident and on the basis of this report investigating agency came into action and proceeded for investigation and on such investigation, body of the deceased was found from the place where the appellant has mentioned the incident has occurred. Even otherwise on the basis of the information of the appellant during investigation on being produced by the appellant, his wearing apparels were seized by the police vide Ex.P-9. Blood stained axe was also seized from the appellant. Seized articles were sent for chemical examination to the FSL where the axe and vest seized from the accused/appellant was found to be stained with blood. These articles were sent to the Serologist for confirmation of origin and the Serologist in the report of Ex.P-26 has categorically mentioned that the axe and banyan seized from the appellant contained human blood.

11. P.W.-1 Mani Bai, sister of the appellant has stated that on the date of incident the deceased Raghu came to her house at about 6.00 p.m. and caught hold of her hand and tried to drag her. In the meanwhile her brother Munna came there. However subsequently she has stated that Raghu ran away from that place. This witness has turned hostile as she resiled from her earlier statement. But the statement of this witness partially supports the case of prosecution that the incident took place as narrated in the FIR, in her house when Raghu came there and caught hold of her hand.

12. P.W.-2 Gau Das has also stated that on the date of incident when he reached near Maro police outpost he saw the accused sitting there with the Constable Gayakwad and Vishnu. He was called by the police Constable and there accused/appellant Munna confessed his guilt.

13. P.W.-4 Anjor Das has stated that that on the basis of information given by Ramkrishna and Ghanshyam that his brother Raghu has been killed by Munna and his dead body is lying near the house of Mani Bai, he had lodged the report.

14. From the evidence available on record it is evident that the investigation of the crime was commenced on the basis of FIR given by the accused. The body of deceased Radheshyam @ Raghu was found at the place mentioned in the FIR by the appellant, the axe and clothing seized from the appellant were stained with human blood. P.W.-1 Mani Bai has stated in her statement that on the date of incident Raghu came to her house and caught hold of her hand and at the same time appellant came there. On the basis of the above circumstance, involvement of the appellant in the crime in question is established and the Court below has not committed any illegality by holding the appellant guilty of causing the death of Radheshyam @ Raghu.

15. Now the question for adjudication of this appeal is whether the appellant committed the crime in question after premeditation with an intention to cause death of Radheshyam. From the evidence available on record we find that when the appellant returned from the pond he saw that deceased Radheshyam caught hold the hand of his sister Mani Bai and even after he reached his house, he did not leave her hand and flee from the place of incident and thus in sudden and grave provocation he picked up the axe and gave two-three blows over the person of the deceased which resulted in his death. Thus, the manner in which the offence is committed by the appellant, it could not be said that the appellant committed the offence with pre meditation with an intention to cause the death of the deceased and the incident took place under sudden and grave provocation in the spur of moment and in this circumstance, the

Court below was not justified in holding the appellant guilty under Section 302 of the IPC. Accordingly the judgment of the trial Court is set aside and instead the appellant is convicted under section 304-II of the IPC and sentenced to undergo imprisonment for eight years.

16. Learned counsel for the accused/appellant submits that the appellant is in jail since 05.06.1998 and as such he has already completed more than 8 years' jail sentence which is not disputed by learned counsel for the State.

17. In view of the above, the accused/appellant is directed to be set at liberty forthwith if not required in any other case.

Sd//-
V.K.Shrivastava
Judge

Sd/-
DHIRENDRA MISHRA
Judge